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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Home Builders Association to review and remedy unfair and unreasonable rate structure of Withlacoochee River Electric Cooperative, Inc.	)	DOCKET NO. 880585-EC
	)	ORDER NO. 20768
	)	ISSUED: 2-17-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
JOHN T. HERNDON

Pursuant to Notice, a Hearing was held in this matter in Tallahassee, Florida, on November 18, 1988.

APPEARANCES:

PATRICK K. WIGGINS, Esquire, and WINGS S. BENTON, Esquire, Ranson & Wiggins, P. O. Drawer 1657, Tallahassee, Florida 32302
Appearing on behalf of Florida Home Builders Association.

PETER C. K. ENWALL, Esquire, and JOHN H. HASWELL, Esquire, Chandler, Gray Lang, Haswell & Enwall, P. A., P. O. Box 23879, Gainesville, Florida 32602
Appearing on behalf of Withlacoochee River Electric Cooperative, Inc.

M. ROBERT CHRIST, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
Appearing on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0861
Appearing on behalf of the Commissioners.

ORDER

BY THE COMMISSION:

BACKGROUND

On September 11, 1985, the Florida Home Builders Association (FHBA) filed a Petition for Declaratory Statement which sought a declaration as to the applicability of Section 366.04(2)(b), Florida Statutes, and Rules 25-9.050 - 25-9.071, Florida Administrative Code, to a $500 Contribution-in-Aid-of-Construction (CIAC) , imposed by Withlacoochee River Electric Cooperative, Inc. (WREC). WREC was granted intervention pursuant to Rule 25-22.039, Florida Administrative Code.

The Commission issued its Declaratory Statement in Order No. 15497 on December 24, 1985, in Docket No. 850595-EC. The Commission found that FHBA had standing to request the

Declaratory Statement. The Commission further found that WREC's CIAC was a matter of rate structure and that municipalities and cooperatives must file all such charges with the Commission pursuant to Section 366.04(2)(f), Florida Statutes, and Chapter 25-9, Florida Administrative Code. A hearing was set for July 2 and 3, 1986, to determine the validity of WREC's CIAC.

During the hearing WREC and FHBA reached an agreement which resolved all issues between them, and executed a Stipulation which was approved by the Commission on October 7, 1986, by Order No. 16696. That order determined that (a) the imposition of a distribution service CIAC was reasonable and acceptable as a rate structure concept, (b) the Stipulation entered into by the parties was approved and its terms incorporated into that order, and (c) WREC would diligently pursue and complete a Cost of Service Study and promptly revise its distribution service CIAC tariff if warranted by the Cost of Service Study.

On April 15, 1988, FHBA filed a Petition to Review and Remedy Unfair and Unreasonable Rate Structure of WREC, alleging essentially that WREC's proposed $500 CIAC was invalid and that the Cost of Service Study justifying the CIAC was flawed. It requested that the Commission reject the $500 CIAC, order a refund of all CIAC amounts collected, review WREC's rate structure and give consideration to the costs caused by seasonal customers, and require a rate structure designed to insure that seasonal customers pay their fair share of the costs.

WREC responded by filing a Motion for More Definite Statement/Motion to Dismiss on May 16, 1988. On May 31, 1988, FHBA responded and clarified its petition by contending that the $500 CIAC, and the Cost of Service Study were invalid. Subsequent thereto the Motion for More Definite Statement filed by WREC was withdrawn. Also, during the early stages of the hearing, the Commission denied WREC's Motion to Dismiss stating that the questions of FHBA's ability to bring this action and the Commission's jurisdiction over WREC's CIAC had been answered in the affirmative by Order No. 16696.

SUMMARY OF ISSUES

The issues developed and considered at the hearing consisted of six legal and twenty factual issues. Issues 20 through 26 are legal in nature, while Issues 1 through 19 are basically factual. Issues 1, 7 and 19 are all-inclusive issues that are dispositive of this proceeding. The primary issue is whether WREC's $500 CIAC is a fair, just and reasonable charge.

FINDINGS, DISCUSSIONS AND CONCLUSIONS

The following findings, discussions and conclusions are dispositive of the issues raised in this proceeding.

Having reviewed the evidence presented in this proceeding, we find that the primary issue left to be decided is whether the record supports the contention by FHBA that the $500 CIAC is not fair, just and reasonable. Ancillary to this issue is a determination of whether the cost of service study supports a $500 CIAC charge.

To be fair, just and reasonable, a CIAC charge must be susceptible to calculation of a cost based differential for each rate class using a consistent methodology. Therefore, to meet the statutory criterion, the methodology advocated by WREC must be applicable to all customer classes. Using this guideline, we find that the April CIAC cost study is deficient and cannot support a CIAC charge for demand metered customers. Although WREC's CIAC study used average embedded cost versus current cost, which we find is a reasonable methodology to quantify the differences in distribution cost between old and new customers, it was based upon erroneous data and assumptions.

First, WREC used a comparison of embedded average cost for old customers and projected average cost for new customers to determine the differential in its CIAC cost study. We agree with FHBA's contention that the projected data used by WREC cannot be verified. This is especially true when WREC's actual expenditures have been lower than those projected in WREC's planned construction work. We find that use of actual data for both old and new customers is appropriate to determine a differential.

Secondly, in its testimony, WREC adjusted embedded plant investment for old customers upward for services installed but not accounted for as completed installations. Total current plant was also adjusted downward to remove load management equipment which is not strictly distribution plant installed to service new customers. We agree with these adjustments and find they more accurately reflect total distribution plant subject to the differential calculation.

Thirdly, there was extensive discussion of the type of units to be used to determine unit cost. In the original study, number of customers was used to determine average cost per existing customer while number of services was used to determine average cost per new customer. We find that the same unit should have been used for both embedded and current cost calculations, and number of customers should be used because distribution plant costs are incurred when the plant is installed regardless of whether a customer is actually receiving service through the meter.

Finally, the cost study did not establish a CIAC for customers on demand metered schedules on a basis comparable to that of residential and general service customers.

We have endorsed the concept of cost based rates on numerous occasions. We agree with WREC that the average embedded cost as determined by its March fully allocated cost study does not differ markedly for residential and general service customers. However, that same study showed that costs for demand metered classes differed significantly from those for the Residential Service and General Service classes. The record shows our Staff prepared a schedule incorporating the aforementioned adjustments to actual data. This schedule showed that the current embedded differential per customer is greater than $500. Therefore, we find that a $500 CIAC charge for residential and general service customers is justified.

The $500 charge is not justified for demand metered customers because the relationship between the $500 CIAC charge and class costs shown in the March fully allocated embedded cost study are significantly different for non-demand metered customers as a group, and demand metered customers. As stated above, to be fair, just and reasonable, a charge must be cost based for all classes. WREC has not demonstrated this to be true.

WREC argued that the higher load factors of these larger customers provided a benefit to the general body of ratepayers which offsets the need to charge a cost-based CIAC. While we recognize that higher load factor customers lower the per KWH cost of purchased power, this lower cost should be properly reflected in the tariff charges which recover these costs. To argue that a high load factor justifies a non-cost based CIAC would result in double counting these benefits assuming WREC's other tariff charges are properly designed.

Finally, we reject WREC's argument that an average cost is not meaningful for customers on demand rate schedules because of their varying size. We find it is appropriate to develop a KW charge for this class of customers. Each customer would then be charged based on his expected maximum demand since the nature of distribution facilities is closely linked to maximum demand, whenever it occurs.

Refund

In this proceeding, FHBA requested us to order WREC to refund with interest all CIAC amounts collected from the time it became a "permanent charge." FHBA argued that it was WREC's responsibility to ensure that a valid cost study was completed, that it failed to meet its responsibility and the results of this failure was an invalid, unreliable study that cannot support any particular level of CIAC. Because WREC relied on the invalid study in converting a "transitional amount" into a "permanent charge," FHBA argues that WREC should be required to refund with interest all CIAC amounts collected from the time it became a "permanent charge."

WREC responded to this contention by asserting that the matter of a refund is a policy question, and not a factual question, and it should be answered in the negative. It points out that there is no support in the record that WREC made any conscious decision to make a "transitional fee permanent". Thus, WREC argues that without this factual basis, the issue cannot be resolved favorably to FHBA.

In the larger sense, however, WREC urges there is no evidence to support a refund or to determine the payee of any such refund with any degree of clarity and that no record basis to do so exists.

We find that the CIAC assessments against FHBA members are principally, if not wholly, for structures to be served under the residential tariff. As we have discussed earlier, the $500 CIAC is justified for residential and general service customers. Therefore, a refund is not warranted.

Other Issues

We find that the other issues raised by the parties in this proceeding are either disposed of by the findings, discussions and conclusions expressed above or are immaterial and irrelevant to a final disposition of this matter. However, WREC shall be required to file with this Commission, within 120 days from the date of this Order a cost of service study that (1) is based on at least two years of actual expenditures for current cost, (2) uses services as the unit for determining average cost and (3) calculates cost based differential separately for each class.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition of Florida Home Builders Association to Review and Remedy Unfair and Unreasonable the Rate Structure of Withlacoochee River Electric Cooperative, Inc. is hereby granted in part and denied in part, as more particularly described in the body of this Order. It is further

ORDERED that Withlacoochee River Electric Cooperative, Inc. shall file with this Commission within 120 days from the date of this Order a fully allocated cost of service study to support an appropriate CIAC charge for large power users in its service area.

By ORDER of the Florida Public Service Commission, this 17th day of February, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15)

days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.